

HOUSE BILL 1320

By Jones S

AN ACT to amend Tennessee Code Annotated, Title 36,  
Chapter 6, Part 4, relative to parenting plans.

WHEREAS, the legislature finds that problems with domestic violence do not necessarily cease when the victimized family is legally separated or divorced. In fact, the violence often escalates, and child custody and visitation become the new forum for the continuation of the abuse. Because current laws relative to child custody and visitation are based on an assumption that even divorcing parents are in relatively equal positions of power, and that such parents act in the children's best interest, these laws often work against the protection of the children and the abused spouse in families with a history of domestic and family violence; and

WHEREAS, Tennessee law requires the Court to examine each parent's "willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child"; and

WHEREAS, laws designed to act in the children's best interest may actually effect a contrary result due to the unique dynamics of domestic violence; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-6-406, is amended by deleting this section in its entirety and substituting instead the following:

(a) There shall be a presumption that no parent with a history of perpetrating domestic or family violence, sexual abuse or incest, as defined under § 39-15-302, shall be awarded sole or joint custody of children, no matter how remote in time the abuse occurred. This presumption shall apply in all proceedings in which child custody is an issue. The court may find a history of perpetrating domestic or family violence if the

court finds that one incident of family violence has resulted in serious bodily injury or the court finds more than one incident of domestic or family violence. The court may also find a history of sexual abuse or incest has occurred upon the finding of a single instance of such conduct. The presumption shall be overcome only by a preponderance of the evidence that the perpetrating parent has successfully completed an intervention program, is not abusing alcohol or illegal drugs or substances, and that the best interest of the child requires that parent's participation as a custodial parent because of the other parent's absence, mental illness or substance abuse, or such other circumstances which affect the best interest of the child. If the presumption is created by a finding that the parent has committed sexual abuse or incest, there will remain a presumption that, if contact is ordered at all, only supervised visitation is in the best interest of the child. The fact that an abused parent suffers from the effects of the abuse shall not be grounds for denying that parent custody.

(b) The permanent parenting plan or custody order, the mechanisms for approval of the permanent parenting plan and any orders governing child custody and visitation, shall not utilize dispute resolution, including mediation, in cases of domestic or family violence. A parent's residential time as provided in the permanent parenting plan, a temporary parenting plan or any other order addressing child custody and visitation shall be limited if it is determined by the court, based upon a prior order or other reliable evidence, that the parent has engaged in any of the following, no matter how remote in time that conduct occurred:

- (1) Domestic violence;
- (2) Family violence;
- (3) Sexual abuse;
- (4) Stalking, as defined by § 39-17-315;

(5) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting responsibilities;

(6) A pattern of emotional abuse of the parent, child or of another person living with that child;

(7) Impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting responsibilities;

(8) Criminal conduct resulting in convictions as they relate to such parent's ability to parent or to the welfare of the child;

(9) Emotional or physical impairment that interferes with the parent's performance of parenting responsibilities;

(10) Such other conduct as the court expressly finds adverse to the best interests of the child; or

(11) Withholding from the other parent access to the child for a prolonged period without good cause. There shall be a presumption that good cause exists if the other parent is found to have engaged in any conduct that is a limiting factor under this subsection (b).

(c) If a parent has been convicted as an adult of an offense under § 39-15-302, title 39, chapter 17, part 10, or §§ 39-13-501--39-13-511, or has been found to be a sexual offender under § 39-13-703, the court shall restrain the parent from contact with a child that would otherwise be allowed under this part. There shall be a presumption that no unsupervised contact shall be allowed between the convicted parent and the child. The court shall consider no contact if the child who is the subject of the visitation order is also the victim and the court shall give specific reasons for allowing contact and set out specific circumstances under which contact shall occur. Prior to allowing contact between a parent who has committed sexual abuse and the victimized child, the court

shall order the parent to complete a treatment program and receive recommendations from the treatment provider.

(d) If a parent resides with an adult who has been convicted, or with a juvenile who has been adjudicated guilty of a sexual offense under § 39-15-302, title 39, chapter 17, part 10, or §§ 39-13-502--§ 39-13-511, or who has been found to be a sexual offender as defined by Section 39-13-703, the court shall restrain that parent from contact with the child unless the contact is supervised to protect the child.

(e) A victim of family or domestic violence or sexual abuse shall not be taxed with the court costs of any proceeding in which child custody is an issue. Court costs shall include, but are not limited to, payment of any court ordered evaluations, guardian ad litem fees and fees to the clerk of the court in which the proceedings are held. Those costs shall be taxed to the perpetrator of family or domestic violence or sexual abuse, including all costs of medical and psychological care for the victims of abuse as necessitated by the family violence.

(f)

(1) All temporary and permanent custody and visitation orders, including orders of separation, divorce, child custody, and child visitation orders and judgments in family or domestic violence cases, shall contain the following restraining order. The restraining order shall prohibit the abusive parent from in any way contacting the abused parent or the child except for specific purposes set forth in the order, which shall be limited to communications expressly dealing with the education, health, and welfare of the child, or for any other purpose expressly agreed to by the abused parent. All such orders shall prohibit the abusive parent, without the express consent of the abused parent, from intentionally going within fifty yards (50 yds.) of the abused parent's home,

school, place of employment, or the person of the abused parent and the child, or within fifty yards (50 yds.) of any of their automobiles, except as otherwise, necessitated by circumstances considering the proximity of the parties' residences or places of employment.

(2) Any violation of the restraining order, if proved by the appropriate standard, shall be punished as contempt of court, and shall result in a termination of all court ordered child visitation. Any costs incurred by the violation of the restraining order shall be taxed to the perpetrator of domestic or family violence or sexual abuse. These costs shall include reasonable attorney fees, discretionary costs and court costs.

(g) If the court finds that both parents have a history of perpetrating domestic or family violence, custody shall be awarded solely to the parent who is less likely to continue to perpetrate domestic or family violence. In such a case, the court shall mandate completion of an intervention program by the custodial parent. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person; provided, that the person shall not allow the child access to an abusive parent except as ordered by the court.

(h) Any mental health professional appointed by the court to conduct any evaluation in a case where family or domestic violence is an issue shall have current and demonstrable training and experience working with perpetrators and victims of family and domestic violence.

(i) In all Title IV-D child or spousal support cases in which payment of support is to be made by income assignment or otherwise, and in all cases where payments are made by income assignment based upon support orders entered on or after January 1, 1994, that are not Title IV-D support cases but must be made to the central collection

and disbursement unit as provided by § 36-5-116, and, except as may otherwise be allowed by § 36-5-501(a)(2)(B), the court shall only approve a temporary or permanent parenting plan involving the payment of support that complies with the requirements for central collection and disbursement as required by § 36-5-116. Prior to approval of a parenting plan in which payments are to be made directly to the spouse or the court clerk or to some other person or entity, there shall be filed with the plan presented to the court a written certification, under oath if filed by a party, or signed by the party's counsel, stating whether the case for which the plan is to be approved is a Title IV-D support case subject to enforcement by the department of human services or is otherwise subject to collection through the department's central collection and disbursement unit established by § 36-5-116.

SECTION 2. Tennessee Code Annotated, Section 36-6-402, is amended by adding the following as appropriately designated subdivisions:

( ) "Abused parent" means a parent who has been the victim of domestic or family violence and has not committed such violence;

( ) "Stalking" means behavior that would violate § 39-17-315;

( ) "Victim" means a person who has been subjected to domestic or family violence, sexual assault or stalking;

( ) "Perpetrator" means a person who commits an act of domestic or family violence, sexual assault or stalking against a victim;

( ) "Family violence" includes, but is not limited to, physical violence, alone or in combination with sexual, economic or emotional abuse, stalking, or other forms of coercive control, by a person who is or has been in a romantic or intimate relationship with the victim, often for the purpose of establishing and maintaining power and control over the victim. Family violence also means any form of child abuse as defined under

title 39, chapter 15, part 4. Family violence does not include reasonable acts of self-defense utilized by a parent to protect that parent or a child in the family from another parent;

( ) "Domestic abuse" means the conduct described in § 36-3-601;

( ) "Sexual abuse" means any type of non-consensual touching or sexual penetration, however slight;

( ) "Supervised visitation" means face to face contact between a parent and a child which occurs in the immediate presence of a supervisor approved by the court under conditions which prevent any physical abuse, threats, intimidation, abduction, or humiliation of either the abused parent or the child. The supervisor shall not be any relative, friend, therapist, or associate of the abusive parent. With the consent of the abused parent, the supervisor may be a family member or friend of the abused parent. At the request of the abused parent, the court may order that the supervisor shall be a police officer or other competent professional. The abusive parent shall pay any and all costs incurred in the supervision of visitation. In no case shall supervised visitation take place overnight or in the home of the abusive parent;

( ) "Intervention program" means a course of evaluation and intervention lasting for a period of not less than twenty-six (26) weeks, designed specifically for perpetrators of family or domestic violence, and certified by the domestic violence state coordinating council;

( ) "Court" means any chancery court, circuit court, general sessions court, juvenile court, or family court having jurisdiction over the parents or child at issue;

SECTION 3. Tennessee Code Annotated, Section 36-6-407, is amended by deleting the section in its entirety and substituting instead the following:

(a) The court shall approve agreements of the parties allocating parenting responsibilities, or specifying rules, if it finds that:

(1) The agreement is consistent with any limitations on a parent's decision-making authority mandated by § 36-6-406;

(2) The agreement is knowing and voluntary; and

(3) The agreement is in the best interest of the child.

(b) The court may consider a parent's refusal, without just cause, to attend a court-ordered parental educational seminar in making an award of sole decision-making authority to the other parent. The court shall order sole decision-making to one (1) parent when it finds that:

(1) A limitation on the other parent's decision-making authority is mandated by § 36-6-406. In such case, the court shall not award joint or sole decision making authority to any parent who has committed any act recognized as a limiting factor under § 36-6-406;

(2) Both parents are opposed to mutual decision making; or

(3) One (1) parent is opposed to mutual decision making, and such opposition is reasonable in light of the parties' inability to satisfy the criteria for mutual decision-making authority;

(c) Except as provided in subsections (a) and (b), the court shall consider the following criteria in allocating decision-making authority:

(1) The existence of a limitation under § 36-6-406. In any separation, divorce, child custody, visitation, child support, alimony, or community property proceeding, no parent who satisfied the court that the parent or any of the children, has been the victim of domestic or family violence perpetrated by the other parent shall be ordered to participate in mediation;



(2) The history of participation of each parent in decision making in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education, extracurricular activities, and religion; and whether each parent attended a court ordered parent education seminar;

(3) Whether the parents have demonstrated the ability and desire to cooperate with one another in decision making regarding the child in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education, extracurricular activities, and religion; and

(4) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.